

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Index No. 1:09-cv-04805
- - - - -x
FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR AMTRUST BANK,

Plaintiff,

-against-

PANKAJ MALIK; MALIK & ASSOCIATES, P.C.;
ARTISAN MORTGAGE COMPANY, INC.; STREAMLINE
MORTGAGE CORPORATION; GENESIS HOME MORTGAGE
CORP.; LINK ONE MORTGAGE BANKER LLC; GLOBAL
FINANCIAL, INC.; RESOURCE ONE, INC.; ACORN
FUNDING GROUP, INC.; SI MORTGAGE COMPANY;
NMR ADVANTAGE ABSTRACT LTD; GEORGE ALDERICE;
NICHOLAS A. PELLEGRINI; ANTONIETTA RUSSO;
and JOHN DOES 1-10,

Defendants.

- - - - -x

335 Madison Avenue
New York, New York

April 20, 2011
11:11 a.m.

30(b)(6) Deposition of PANKAJ MALIK,
a Defendant in the above-entitled action,
held at the above time and place, taken
before Jessica R. Taft, a Notary Public
of the State of New York, pursuant to
Notice.

1 P. MALIK

2 Q When did you graduate from St.
3 John's law school?

4 A '93.

5 Q What licenses do you currently
6 hold?

7 A Attorney-at-law. I was admitted
8 in 1994.

9 Q For which states do you hold
10 licenses currently?

11 A New York and federal.

12 Q Which federal courts do you hold
13 admission to practice?

14 A The Eastern District and the
15 Supreme Court.

16 Q To which appellate division were
17 you admitted to?

18 A Second department.

19 Q Are you currently in good
20 standing with the second department?

21 A Yes.

22 Q Upon graduating from St. John's,
23 did you join the firm?

24 A Yes.

25 Q What firm was that?

1 P. MALIK

2 A Yes, and then there was also
3 Donovan and Malik.

4 Q When did Donovan and Malik begin?

5 A Late 2000.

6 Q Was it an LLC, an LLP?

7 A I don't remember.

8 Q How long did you maintain those
9 three locations?

10 A The Flushing location I am pretty
11 sure sometime in 2001, 2002 I let go of, and
12 then the partnership between Donovan and
13 Malik, I think we parted ways in 2001,
14 summer of 2001. So then she took the Long
15 Island office and I kept the Queens office.

16 Q For the record, the Queens office
17 would be the one located on East Elmhurst,
18 correct?

19 A Yes, yes.

20 Q When you and Ms. Donovan parted
21 ways in the summer of 2001, what happened?
22 Did you join another firm?

23 A No, I incorporated my solo
24 practice into Malik and Associates, P.C.

25 Q That was in the summer of 2001?

1 P. MALIK

2 A Yes, I believe August.

3 Q How many attorneys?

4 A At the beginning it was two, and
5 then on and off I have had either one or two
6 or no associates since then.

7 Q So, between 2001 and 2011?

8 A Yes.

9 Q One, two, or none?

10 A Well, no. There were actually,
11 at one point I had three associates, so --
12 right now I have one, so it has been on and
13 off.

14 Q Any partners?

15 A No.

16 Q In 2001, how big was your staff,
17 or did you have a staff?

18 MR. FURMAN: What year are you
19 asking?

20 MS. KIM: 2001.

21 MR. FURMAN: We are here -- I
22 am going to interrupt you, because we
23 have now had over fifty questions that
24 have nothing to do with what the
25 purpose of today's deposition is.

1 P. MALIK

2 Q When was that meeting?

3 A Two or three weeks ago.

4 Q Who were the attendees at that
5 meeting?

6 A Myself, Tom, Susan and Alex. And
7 then the other staff members would pop in
8 when they had issues for Tom.

9 Q What other topics were discussed
10 at this meeting, other than this 30(b)(6)
11 notice and Mr. Paykin's computer?

12 A Okay. The RAM space in server
13 two was almost finished, so we were
14 discussing about getting an upgraded,
15 increasing the memory, and he had to check
16 the server to see if there were any slots
17 available to, so that we could update it.
18 And it was recommended that we get like a
19 500-gig upgrade because we were running out
20 of space, even though we have space on
21 server one.

22 And then we also discussed
23 increasing the on-line back-up from what it
24 was right now, from 90 days to unlimited, so
25 that even if somebody deleted something it

1 P. MALIK

2 would forever be backed up so that nothing
3 could ever really be deleted.

4 And then we discussed getting the
5 printers and the copiers -- we wanted it so
6 that instead of having to print something
7 and then fax it, we wanted him to set up
8 something so that we could print and fax at
9 the same time and save paper. So he was
10 trying to configure that, because ever since
11 we've gotten our new copiers and everything
12 we haven't been able to -- first we have to
13 print it and then fax it and then copy it
14 rather than just doing it in one shot.

15 And then we talked about getting
16 an e-fax, because the fax machines were
17 giving us a hard time and we thought it
18 would be more economical to do an e-fax.

19 There was like a whole agenda:
20 Giving me and Alex access to the server and
21 the public folders remotely, because nobody
22 had access to get into the server outside of
23 the office location, so we wanted to set
24 that up. He needed my authorization to give
25 Alex that thing, so I okayed that.

1 P. MALIK

2 Then I wanted the ability to get
3 my Outlook calendar onto my BlackBerry,
4 because I still can't get my Outlook
5 calendar on my BlackBerry, which is really
6 annoying.

7 And then -- what else was on the
8 agenda? There was the fact that they had
9 come in and they had upgraded the hard drive
10 in Alex's computer, but the guy that came in
11 never screwed back the back of the hard
12 drive in. It was open, so we had to call
13 him back to come in and screw it in, screw
14 it back in.

15 What was the other thing? The
16 antivirus, what kind of antivirus he was
17 using, and I wanted him to make sure
18 everything was upgraded, because Alex felt
19 that some of the computers had, the
20 antivirus was not, the system was not as
21 secure, so we wanted him to make sure that
22 was upgraded. He said he would take care of
23 that.

24 And then we wanted some e-mails,
25 you know, some -- there is a couple of

1 P. MALIK

2 e-mail names and everything had to be
3 changed. A couple of people had left in
4 March, so that I wanted him to forward that,
5 those e-mails to somebody else, and we
6 wanted like an automatic reply that if it
7 came into the main web site e-mail, because
8 we just set up a web site, then there would
9 be an automatic reply that somebody would
10 get back to them within 24 to 48 hours.

11 The response time, we felt that
12 sometimes that they could respond faster.
13 The speed, the Internet, everybody was
14 complaining that the Internet is slow.

15 It was a long meeting. A lot,
16 maybe more things were discussed. I don't
17 remember every single thing, but that is
18 what I remember.

19 Q How many hours was this meeting?

20 A About an hour and a half, two-
21 hour meeting. And he was with me for some
22 time and then he was out checking the server
23 and the slots and all of that, so he was
24 checking Alex's computer, some of the other
25 issues that some of the other people were

1 P. MALIK

2 having before he left.

3 Q And it was during the course of
4 this one- to two-hour meeting that you
5 discussed this 30(b)(6) notice with Tom?

6 A You know, I briefly asked him a
7 couple of questions, and only the things
8 that I wasn't familiar with, and that was
9 it. It was a very small part of the
10 meeting.

11 Q What weren't you familiar with?

12 A The types of data processing and
13 storage devices that they used, and where --
14 a couple of questions, back-up facility and
15 things like that.

16 Q In the course of your preparation
17 for this deposition, did you speak with
18 anyone from Crossland Technologies?

19 A No.

20 Q When Crossland Technologies was
21 your IT service provider, vendor, who was
22 your contact at Crossland Technologies?

23 A Ekram Huk, or Ekram Kahn; I don't
24 remember his last name, but it is E-K-R-A-M.

25 Q You don't remember his last name,

1 P. MALIK

2 though?

3 A It was either Ekram Kahn or Huk.
4 I don't remember. I only called him Ekram.

5 Q We will refer to him as Ekram.

6 MR. FURMAN: I don't think we
7 have a choice.

8 MS. KIM: I don't think we have
9 a choice, right.

10 BY MS. KIM:

11 Q Was he the only person you had
12 dealt with from 2003 to the end of the time
13 period that day with your vendor?

14 A Yes.

15 Q Was he a customer rep or was he
16 president of the company, or who was he at
17 Crossland?

18 A You know, I knew Ekram before I
19 knew he was part of Crossland Technologies
20 because he was just taking care of the IT.
21 We were sharing office space before we moved
22 into our own suite in 2003, and he was
23 managing all the IT systems there.

24 And then when I got my own suite,
25 I hired him to do all the hard wiring and

1 P. MALIK

2 some upgrades?

3 Q With respect to Roman numeral
4 heading number two, back-up and retention,
5 which topics did you ask Tom about?

6 A We discussed number 12 and 13.
7 14, 18, 19, and then 20, 21, 22, 23 and 24
8 and 25.

9 Q With respect to topic number 14,
10 what did you discuss with him?

11 A That everything was backed up and
12 maintained -- 14? Electronic --

13 Q Records and management policies
14 and procedures?

15 A We really don't have any specific
16 policies like that, no.

17 Q And you asked Tom about it?

18 A No.

19 Q You mentioned 14.

20 A I mistakenly mentioned 14. I
21 didn't really read it thoroughly.

22 It wasn't like we sat down and
23 went through it point by point. It was just
24 like a general discussion, but I do remember
25 we covered some of the topics.

1 P. MALIK

2 exactly are you asking?

3 Q You said you discussed this with
4 him, though?

5 A Yes, and neither one of us could
6 really figure out what you meant.

7 Q Are files deleted from computers
8 at your company?

9 A Sometimes.

10 Q What do you mean by sometimes, on
11 a schedule?

12 A No.

13 Q When are they deleted, then?

14 A What do you mean by files, first
15 of all?

16 Q Let's take just a, let's take --

17 A Like a document file, a picture
18 file?

19 Q Is there a difference between
20 files in terms of deletion?

21 A I don't know what type of files
22 you are talking about. There is no schedule
23 to delete any files, if that is what you are
24 asking.

25 You asked me to ask you to

1 P. MALIK

2 rephrase, so please, can you rephrase? I
3 really don't understand what you are asking.

4 Q Is there a difference in the
5 deleting process or processes that you use,
6 depending on the file?

7 A That is not what you asked me.
8 You asked me if files are ever deleted in my
9 office, not if there was a schedule or a
10 process to delete files.

11 Q And you said yes, and I said is
12 there a schedule --

13 MR. FURMAN: No, the answer was
14 not yes, the answer was sometimes.

15 MS. KIM: Sometimes, and then I
16 asked is there a schedule.

17 MR. FURMAN: Don't
18 mischaracterize the testimony.

19 THE WITNESS: You never asked
20 me that question.

21 BY MS. KIM:

22 Q I am asking you now, are they
23 deleted on a schedule?

24 A No.

25 Q How are they deleted?

1 P. MALIK

2 A There is no rhyme or like
3 specific process by which they are deleted,
4 but can I say that a file has never been
5 deleted in my office, no.

6 Q Do you delete files from the
7 computer?

8 MR. FURMAN: I am going to
9 object, just because there is a
10 terminology here of the use of files
11 which I can comprehend, because --

12 MS. KIM: Objection to form is
13 fine.

14 MR. FURMAN: I want to explain
15 my objection.

16 MS. KIM: No, objection to form
17 is fine under the rules.

18 MR. FURMAN: I don't want to be
19 caught wrong.

20 MS. KIM: If you have a
21 question about files --

22 MR. FURMAN: You are cutting me
23 off, and I want to speak.

24 MS. KIM: Objection to form is
25 fine, and we are trying to get through

1 P. MALIK

2 this deposition.

3 MR. FURMAN: You are cutting me
4 off when I want to speak.

5 You are using the term "files"
6 which has no context. If you are
7 asking about, for example, an e-mail
8 or you are asking about some kind of
9 other electronic data, then you have
10 to ask that. The term "files" could
11 mean a paper file, it could mean a
12 variety of things. And please don't
13 cut me off when I speak.

14 MS. KIM: Objection to form
15 will do just fine.

16 MR. FURMAN: Again, please
17 don't cut me off when I spoke.

18 MS. KIM: I didn't cut you off
19 there. I just requested that
20 objection to form under the federal
21 rules is just fine.

22 BY MS. KIM:

23 Q Now, do you delete files from
24 your computer? And if you mean that to mean
25 e-mails or PDFs or a Microsoft Word

1 P. MALIK

2 document --

3 A What to you mean by it? What are
4 you looking for, what are you asking?

5 Q I am just asking a very broad
6 question, if you want to answer yes or no to
7 that?

8 MR. FURMAN: No, no, please.
9 That is an improper question. Please
10 ask a question so my client can answer.

11 MS. KIM: Objection to form
12 under the federal rules is just fine.

13 THE WITNESS: Are you going to
14 rephrase the question?

15 BY MS. KIM:

16 Q Do you not understand the question?

17 A I want you to tell me what type
18 of files you are referring to.

19 Q Do you delete e-mails?

20 A Yes.

21 Q Did you discuss with Mr.
22 Jacobberger topic 24, the locations, if any,
23 where files are archived off the system?

24 A Yes.

25 Q What was his response, or what

1 P. MALIK

2 did he say?

3 A Utah.

4 Q Where in Utah?

5 A I don't know.

6 Q What company?

7 A I don't know.

8 Q Do you pay for the archive of the
9 files, archiving of the files?

10 A I am assuming it is built into
11 what I pay him on a monthly basis. I am
12 sure he is not going to give me any services
13 for free.

14 Q He is responsible for archiving
15 your files?

16 A Yes.

17 Q How regularly are files archived?

18 A I don't know.

19 Q Do you know when files are archived?

20 A I am sorry?

21 Q Do you know when files are archived?

22 A No.

23 Q Did you ask Mr. Jacobberger about
24 that?

25 A No. That is not in your

1 P. MALIK

2 Q Is that your signature there?

3 A Yes.

4 Q Thank you. You can put it aside.

5 Ms. Malik, during the course of
6 discovery in this litigation, we understand
7 from your counsel that your server was
8 improperly installed and that at the time of
9 installation a back-up system had been
10 requested.

11 A Yes.

12 MR. FURMAN: Objection to the
13 form.

14 BY MS. KIM;

15 Q Counsel also told us that
16 approximately one year ago no back-up
17 system -- that one year ago you had
18 discovered that no back-up system was in
19 place, is that correct?

20 MR. FURMAN: Objection to form.

21 THE WITNESS: Yes.

22 BY MS. KIM:

23 Q How did you discover it?

24 A When I hired Transitional Computing.

25 Q When you hired they just walked

1 P. MALIK

2 in and they found it, or how did--

3 MR. FURMAN: Objection to form.

4 THE WITNESS: Do you want to
5 rephrase?

6 BY MS. KIM:

7 Q You may answer.

8 A Could you rephrase?

9 Q Is there something you didn't
10 understand about the question?

11 A Yes. Could you just rephrase it?

12 MS. KIM: Would you like to
13 re-read the question, please.

14 (Thereupon, the record was read
15 back by the reporter as recorded above.)

16 BY MS. KIM:

17 Q How was it discovered?

18 MR. FURMAN: Which question are
19 we asking?

20 BY MS. KIM;

21 Q Do you understand what I am
22 asking?

23 MR. FURMAN: No, because your
24 first question that was read back was
25 essentially asking what Ms. Malik

1 P. MALIK

2 understood someone else's mindset to
3 be. Now you are asking how was it
4 discovered.

5 Whose knowledge base are you
6 asking about?

7 MS. KIM: Thanks for your
8 commentary; again, objection to form.

9 If she doesn't understand the
10 question, she clearly has told me when
11 she doesn't understand a question she
12 will let me know.

13 THE WITNESS: So, are you
14 asking how I discovered it?

15 BY MS. KIM:

16 Q Well, no, I am asking -- you said
17 it was discovered, so I am asking you how it
18 was discovered?

19 A What?

20 Q The fact that no back-up system
21 was in place?

22 A When Tom came in at our initial
23 meeting, he examined our servers and
24 whatever else IT people examine, and he came
25 in and said that there was no back-up. And

1 P. MALIK

2 I was very surprised by that.

3 Q Why were you surprised?

4 A Because for all these years that
5 I had been dealing with Ekram, I always told
6 him in case we ever lose data, I want to
7 make sure that everything is backed up. And
8 he always assured me that everything was
9 backed up, everything was backed up, and,
10 you know, apparently it never was.

11 Q You mentioned some other IT
12 people. Who were you referring to?

13 A What other IT people?

14 Q When you said they came in, Tom
15 came in, looked at the system.

16 A Yeah.

17 Q And then you mentioned other IT
18 people?

19 MR. FURMAN: No, that wasn't
20 the testimony.

21 THE WITNESS: No, I didn't. I
22 never said other IT people.

23 BY MS. KIM:

24 Q You mentioned, it didn't sound
25 like it was Tom alone.

1 P. MALIK

2 Q Other than the conversation you
3 had about the 30(b)(6) notice you had with
4 Tom?

5 A Uh-huh, correct.

6 Q When Tom told you there was no
7 back-up, did he give you a reason as to why
8 no back-up system was in place?

9 A I don't recall.

10 Q Did you ask him when you had the
11 conversations about the 30(b)(6) deposition,
12 in preparation for the 30(b)(6) deposition?

13 A Ask him what?

14 Q About why there was no back-up in
15 place?

16 A I don't know, and I don't know
17 why he would even know that. He wasn't in
18 charge of the IT before he came on board.
19 He just told me that there was none.

20 Q Did you ask for a reason why
21 there was no back-up in place?

22 A No.

23 Q Did you ask for the back-up logs?

24 MR. FURMAN: What?

25 THE WITNESS: I have no idea

1 P. MALIK

2 what those are.

3 MR. FURMAN: What did you ask?

4 I didn't understand that.

5 (Thereupon, the record was read
6 back by the reporter as recorded above.)

7 BY MS. KIM;

8 Q Did you tell Ekram that there was
9 no back-up system in place?

10 A I don't remember if I had a
11 conversation with him about it.

12 Q Did anyone at the company tell
13 Ekram that there was no back-up system in
14 place?

15 MR. FURMAN: Asked and
16 answered.

17 THE WITNESS: I don't know.

18 BY MS. KIM:

19 Q Prior to the discovery by Tom of
20 no back-up system being in place, why did
21 you think that the back-up system was
22 working?

23 MR. FURMAN: Objection.

24 THE WITNESS: Why did I think
25 the back-up system was working?

1 P. MALIK

2 BY MS. KIM:

3 Q Yes.

4 A I guess because whenever we did
5 have a conversation with Ekram, I always had
6 told him to make sure that there is,
7 everything was backed up.

8 And it wasn't until sometime in
9 2009, I believe, that we realized that there
10 really wasn't any way to retrieve some items
11 from the thing, and he kept telling me that
12 there was a particular reason why we
13 couldn't retrieve them. And it wasn't until
14 Tom came in that I discovered that there was
15 never any back-up system in place, so there
16 was no back-up. Those were his words, that
17 there was no back-up.

18 Q What did you mean by retrieve
19 from the thing?

20 A When we got notice of this
21 litigation, or the claims, before we even
22 got the lawsuit papers served, when I got,
23 we started getting the claims, I wanted them
24 to take a look to see if we could find the
25 e-mails wherein all these closings were

1 P. MALIK

2 authorized by Amtrust, and because there
3 were certain e-mails that were exchanged
4 between my office employees and some people
5 at Amtrust, and we could not locate them.

6 So I told Ekram to check the
7 back-up to see if he could locate any
8 communications, and he said he could not.

9 Q You said that he gave, he had
10 given you some reasons as to why there was
11 no back-up?

12 A He said that if an e-mail was
13 saved on the Exchange server, then he could
14 retrieve it. But if e-mails had been
15 deleted, there is no way that he could ever
16 retrieve that, which I learned later on was
17 incorrect information.

18 Q About what time are we talking
19 about in 2009?

20 A It was around the time that I
21 first started getting these claims on these
22 files, and it was sometime in 2009, maybe
23 spring or summer, I don't remember when.

24 Q Did Ekram give you any other
25 reasons as to why the e-mails couldn't be

1 P. MALIK

2 If there was a problem with the
3 computer in general?

4 A Everybody had Ekram's number,
5 like I said. They would just call Ekram.
6 There was no one person designated that if
7 you had a problem you had to go to that
8 person, if that is what you mean.

9 Q Let's say you wanted to upgrade
10 software?

11 MR. FURMAN: Objection.

12 THE WITNESS: We would contact
13 Ekram.

14 BY MS. KIM:

15 Q Who is "we" is what I am asking?

16 A Anybody who would make that
17 recommendation to me, and then I would
18 decide if I wanted to spend the money and if
19 it was worth it, and then I would ask Ekram
20 to do it.

21 Q And you would be in contact with
22 Ekram?

23 A Yes.

24 Q Do you remember when the computer
25 server was installed?

1 P. MALIK

2 A 2003, some point.

3 Q Season?

4 A I don't remember.

5 Q Why were they installed?

6 A It was recommended because we had
7 so many computers that -- I honestly don't
8 know what the real purpose was, but it was
9 recommended that we get them.

10 Q Recommended by whom?

11 A By Ekram.

12 Q How many computers did you have
13 at the time?

14 A More than twenty.

15 Q Would you say the first half or
16 second half of 2003?

17 A I don't remember.

18 Q Are there records that you could
19 check to find out when the servers were
20 installed?

21 A Not really.

22 Q Did you pay Ekram for the
23 installation of the servers?

24 A I don't remember.

25 Q He didn't do it for free, did he?

1 P. MALIK

2 dated June 16, 2009, addressed to
3 Malik and Associates P.C., Bates
4 stamped PLTF 018255-18256, was marked
5 Exhibit 4 for Identification, as of
6 this date.)

7 BY MS. KIM:

8 Q What I have identified as Exhibit
9 Number 4 is a letter dated June 16, 2009,
10 addressed to Malik and Associates P.C. It
11 is Bates stamped PLTF 018255. It is a
12 two-page document, and the last, the Bates
13 range of the last page is 18256.

14 Ms. Malik, have you finished
15 reviewing this document?

16 A Yes.

17 Q Have you seen this document before?

18 A I believe so.

19 Q Did you receive it on or about
20 June 16, 2009?

21 A I don't remember.

22 Q What is this document?

23 A It was, it looks to be a claim
24 letter from Amtrust Bank.

25 Q When you receive or when the

1 P. MALIK
2 company receives a claim letter, what
3 happens next?

4 MR. FURMAN: Objection. It is
5 beyond the scope of today's
6 deposition. I am instructing my
7 client not to answer that question.

8 MS. KIM: She has already
9 testified that she received notices of
10 claim and that she searched e-mails
11 with respect to those notices.

12 MR. FURMAN: Ask her about
13 questions that relate to the scope of
14 today's deposition --

15 MS. KIM: I am, and she has
16 already answered --

17 MR. FURMAN: -- not what she
18 does with a claim letter..

19 MS. KIM: It is with respect to
20 the e-mails, if that is one of the
21 processes, and that is her answer.

22 MR. FURMAN: You can ask her if
23 she sent an e-mail. That is fine.

24 MS. KIM: No. I am sorry. Are
25 there any other objections?

1 P. MALIK

2 MR. FURMAN: I am going to
3 instruct my client not to answer your
4 question. Ask another question.

5 BY MS. KIM:

6 Q When you received a claim letter,
7 did you search for e-mails?

8 A When I received this claim
9 letter?

10 Q This claim letter, sure?

11 A I don't remember when I received
12 it and what I did after that. I don't know
13 if I received this particular one, if there
14 were a series of them. I don't remember.

15 Q Do you have a policy with respect
16 to claim letters in terms of searching for
17 e-mails?

18 A No.

19 Q Do claim letters differ in terms
20 of, do you have different reactions when you
21 receive claim letters? Sometimes you search
22 for e-mails, sometimes you don't?

23 MR. FURMAN: Objection. You
24 know --

25 MS. KIM: Object to form, but

1 P. MALIK

2 you can't --

3 MR. FURMAN: What you are
4 asking borders on the absurd, okay?

5 MS. KIM: Object to form. If
6 you don't like the question, that is
7 fine, but if she doesn't understand
8 it, that is really for her to say.

9 THE WITNESS: I don't know.

10 MS. KIM: You don't know, that
11 is fine.

12 BY MS. KIM:

13 Q Turning to Exhibit 6, if you go
14 down to about almost the bottom of the
15 letter --

16 A Exhibit 6?

17 Q I am sorry, Exhibit 4. If you go
18 to about the bottom of the letter, it says
19 "Amtrust is requesting that you provide us
20 with copies of disbursement logs for the
21 above transactions."

22 Did you provide them with copies?

23 MR. FURMAN: I am going to
24 instruct my client not to answer. It
25 doesn't relate to electronic

1 P. MALIK

2 discovery, which is the purpose of
3 today's deposition.

4 MS. KIM: No, it is also about
5 document retention.

6 BY MS. KIM:

7 Q Did you provide them with
8 disbursement logs?

9 MR. FURMAN: I am sorry, you
10 are wrong about what you saying here.
11 This is beyond the scope of today's
12 deposition.

13 MS. KIM: It is not beyond the
14 scope. I am asking about --

15 MR. FURMAN: You can ask if
16 disbursement logs are electronic,
17 sure, and then you can ask a follow-up
18 question, sure. That I can see.

19 MS. KIM: We are asking how
20 they maintain their files.

21 MR. FURMAN: No, I am sorry,
22 that is not the scope of the
23 deposition.

24 MS. KIM: The records and
25 retention is clearly in the notice.

1 P. MALIK

2 MR. FURMAN: No, no. We will
3 go to the judge on that. My answer to
4 that is I am instructing my client not
5 to answer your question; happy to see
6 a judge over this.

7 To me this is nothing but a
8 back door attempt to get discovery.

9 MS. KIM: I am sorry, there is
10 no question pending.

11 MR. FURMAN: Don't cut me off.

12 MS. KIM: Please don't make a
13 comment if there is no question
14 pending.

15 MR. FURMAN: Don't cut me off.

16 MS. KIM: You don't have to
17 make a your little speeches.

18 MR. FURMAN: I don't care what
19 you say about me, but don't cut me off.

20 MS. KIM: Then don't make any
21 more speeches.

22 BY MS. KIM:

23 Q So, were any e-mails retrievable
24 from the server between 2003 through 2009?

25 A I don't know. Thank you.

1 P. MALIK

2 Q In preparation for this
3 deposition, did you ask anyone if any
4 e-mails were retrievable?

5 MR. FURMAN: It has already
6 been asked and answered several times
7 now.

8 THE WITNESS: No.

9 BY MS. KIM:

10 Q Ms. Malik, please go to Exhibit 1.

11 A Was that your notice?

12 Q Yes, the notice, please.

13 A Okay.

14 Q If you go to item number 41.

15 A Yes.

16 Q The e-mail address R Davila at
17 Malik PC.com. Whose e-mail address is it?

18 A Rosa Davila. It was.

19 Q Is she still an employee of the
20 firm?

21 A No.

22 Q When did she leave?

23 A Maybe 2009.

24 Q Early, mid, late?

25 A I don't remember.

1 P. MALIK

2 Q What was Rosa's position at Malik
3 and Associates?

4 A She was a paralegal.

5 Q Was she part of the layoff in 2009?

6 A I don't remember.

7 Q What were her primary
8 responsibilities as a paralegal?

9 MR. FURMAN: Objection. That
10 has nothing to do with the scope of
11 today's deposition.

12 MS. KIM: I'm trying to
13 understand what her e-mail account,
14 the scope of it.

15 MR. FURMAN: The scope of her
16 e-mail account? This is about
17 document retention, e-mail retention,
18 and the retrieval of e-mails. What on
19 earth could the scope of her duties
20 have to do with retrievable e-mails?

21 MS. KIM: What kind of e-mails
22 would she receive?

23 MR. FURMAN: You are asking
24 what kind of e-mails? I am going to
25 instruct my client not to answer that.

1 P. MALIK

2 What kind of e-mails? Take that to
3 the judge.

4 BY MS. KIM:

5 Q What kind of e-mails would she
6 receive, such as was she dealing primarily
7 with foreclosures, would she deal with
8 Amtrust Bank?

9 MR. FURMAN: Objection. To the
10 extent you can answer.

11 BY MS. KIM:

12 Q Did she deal with Amtrust Bank?

13 THE WITNESS: Is it okay for me
14 to answer?

15 MR. FURMAN: Yes, if you can
16 answer.

17 THE WITNESS: Could you repeat
18 the question, please?

19 BY MS. KIM:

20 Q Yes. Did Rosa Davila, as part of
21 her duties and responsibilities as a
22 paralegal, did she work with Amtrust Bank?

23 MR. FURMAN: Objection.

24 THE WITNESS: For a period of
25 time, she did.

1 P. MALIK

2 BY MS. KIM:

3 Q What period of time are we
4 talking about?

5 A I don't remember specifically.

6 Q DOCPREP at Malik PC.com. Did
7 that e-mail address belong to someone?

8 A Well, it is a general e-mail
9 where we receive bank closing documents, so
10 it has been maintained by more than one
11 person.

12 Q Who maintains it?

13 A Not maintain but used, I would
14 say. So, for a time it was used I believe
15 by Danielle Lewis, for a time it was used
16 by, I don't know, maybe Johanna might have
17 used it for a little while. I don't know.

18 Q In 2008, who would have used it?

19 A Danielle.

20 Q Why not Johanna?

21 A Because she had her own e-mail
22 account at the time. But if Danielle wasn't
23 here, then she would hop in and do what
24 needed to be done, retrieve the documents
25 and things like that.

1 P. MALIK

2 Q Did Danielle have her own e-mail
3 address?

4 A I don't remember if she had a
5 separate one.

6 Q Did she work with Amtrust Bank?

7 A I believe so.

8 Q In 2008?

9 A Yes.

10 Q But you are not sure if she had
11 an e-mail account in connection with the
12 subject loans at issue in this litigation,
13 other than DOCPREP at Malik PC.com?

14 MR. FURMAN: Objection.

15 THE WITNESS: Correct.

16 BY MS. KIM:

17 Q The e-mail address P as Peter
18 Malik111 at Yahoo dot-com is yours?

19 A Yes.

20 Q Did anyone else have access to
21 this account?

22 A No.

23 Q Did you have a legal assistant in
24 2008?

25 A Yes.

1 P. MALIK

2 Malik and Associates PC?

3 A It would have been the closer of
4 the particular loan, it could have been
5 Danielle, it could have been Rosa, it could
6 have been Kushu, who was also -- Kanwarjeet
7 is also known as Kushu. That would have
8 been about it; anyone really in the closing
9 department.

10 Q How many people were in the
11 closing department at the time of the
12 subject loans?

13 A I don't remember.

14 Q Guesstimate: More than five,
15 less than five?

16 A It was -- I really don't
17 remember. I had looked it up, I had given a
18 list of employees that were in the firm at
19 the time, and I believe that has been
20 provided previously. So I would refer you
21 to that.

22 Q In your answers to plaintiff's
23 first set of interrogatories, in Exhibit 3,
24 you identified Kanwarjeet Malik as your
25 brother?

1 P. MALIK

2 A Yes.

3 Q When did your brother leave Malik
4 and Associates P.C.?

5 A 2008.

6 Q About what time period?

7 A Sometime towards the end of the
8 year.

9 (Brief break.)

10 BY MS. KIM:

11 Q Ms. Malik, returning to item
12 number 41, Mack at Malik PC.com, whose
13 e-mail address is that?

14 A Mack Smitherman.

15 Q And his title is bookkeeper?

16 A No, file clerk.

17 Q Is he still with the company?

18 A Yes, he is still with the company.

19 Q He was with the company in 2008?

20 A Yes, I believe so. I would refer
21 back to that list. I looked at payroll
22 records and give you that list.

23 Q MSookra at Malik PC.com, whose
24 e-mail address is that?

25 A Miranda Sookra.

1 P. MALIK

2 office once or twice.

3 Q So the laptop is more of a
4 personal computer for you?

5 A Yes.

6 Q Prior to 2010, did any other
7 employees work off their laptops?

8 A No.

9 Q Prior to 2010, if an employee
10 left the company, you have their desktops;
11 there was nothing you would do with them?

12 A No.

13 Q Would anyone look at them to look
14 at what files were on their desktops?

15 A No.

16 Q When you learned that certain
17 e-mails weren't retrievable from the server,
18 around 2009, 2010, were there any desktops
19 you looked at of former employees?

20 A No.

21 Q Were there any former employee
22 desktops around?

23 A Yes, but they were used by their
24 replacement employees, or other people.

25 Q Once you had a replacement

1 P. MALIK

2 employee, what happens with the desktop
3 computer?

4 A Nothing.

5 Q The person just logs on as a
6 former employee?

7 A I believe they changed their
8 password, but nothing is done with the
9 actual desktop. If you are asking about
10 e-mail accounts and passwords, that is
11 different, a different answer.

12 Q What happens with their e-mail
13 accounts?

14 A They are locked out. Sometimes
15 they are forwarded to the person that takes
16 over their position, or they are left kept
17 active for a while so that the new person
18 can keep checking the e-mails, and there is
19 a message sent out to please forward all
20 your inquiries regarding these type of cases
21 to this person, and that is it.

22 And then the passwords are changed
23 and the e-mail account name is changed.

24 Q And this was the case in 2008?

25 A Yes.

1 P. MALIK

2 A I don't know what you mean by
3 closed. But if they were still accessible,
4 yes, they were still accessible. I don't
5 know what you mean by closed per se.

6 Q Were they still accepting e-mails?

7 A I don't know. I don't know. I
8 never checked that.

9 Q Were they still active?

10 A I don't know.

11 Q Prior to 2010, do you know?

12 A I don't know.

13 Q Would Susan check their e-mails?
14 I am sorry, former employees' e-mails --

15 A No.

16 Q -- to make sure that their e-mail
17 accounts were no longer active?

18 A Not unless specifically
19 instructed to.

20 Q Who would instruct her?

21 A I would. I would, or my
22 attorneys.

23 Q When you found out that there
24 were e-mails unretrievable from the server,
25 did you search the employees' desktops?

1 P. MALIK

2 A No. At that time, no. We
3 wouldn't have checked their desktops I don't
4 think, but no.

5 Q Why not.

6 A Because everything should have
7 been on the server. All the e-mails were on
8 the Exchange server.

9 Q But once you found out that
10 e-mails weren't on the Exchange server
11 because there is no back-up of them, did you
12 check the desktops to make sure that they
13 weren't on their computers?

14 A I don't know if Ekram did or not.
15 I know I didn't.

16 Q Did you tell Ekram to do so?

17 A I just told him to see if he
18 could find certain e-mails, and he told me
19 that he could not, he could not retrieve
20 them.

21 Q Off the server?

22 A From wherever. I didn't
23 specifically ask him where all he had
24 checked.

25 Q Prior to 2010, when an employee

1 P. MALIK

2 that certain e-mails were unretrievable from
3 the server, did you ask your employees to
4 look at all of their e-mail folders?

5 A Not until -- at what point?
6 Before this deposition, yes.

7 Q And were any e-mails found?

8 A Yes.

9 Q And were they produced to us?

10 A Yes.

11 Q What about in 2008?

12 MR. FURMAN: What about 2008?

13 BY MS. KIM:

14 Q Did you ask your employees to
15 search their e-mail folders?

16 A No.

17 Q What about in 2009 when you
18 received notices of claim, did you ask your
19 employees to search their e-mail folders?

20 A I had only asked Rosa and Ekram.

21 Q Would Ekram have e-mail folders
22 to search?

23 A No. I had told Ekram to see if
24 he could locate some of these e-mails, and I
25 had asked Rosa to check if she could find it

1 P. MALIK

2 anywhere.

3 Q Find it anywhere within her
4 computer or his computer?

5 A Within her computer.

6 Q And where did Ekram search?

7 A Like I said, I don't know. I
8 never specifically asked him where he
9 searched.

10 Q Did you provide him with a list
11 of employees' computers to search?

12 A No. But when we got these
13 discovery demands, my -- you know, I spoke
14 with Tom and I said, look, before I tell
15 them that there is absolutely nothing else
16 available anywhere, can you just tell me
17 where else we could look?

18 And he was the one that said,
19 suggested why don't you go in and look at
20 these individual, because we still had some
21 active -- I didn't know that they were still
22 there -- the old e-mail accounts for these
23 employees.

24 So then that is when we started
25 searching all of those for everything having

1 P. MALIK

2 to do with these properties and these cases
3 and everything, and we were able to recover --
4 whatever we recovered we produced.

5 Q Where were the old e-mail
6 accounts maintained?

7 A I don't know. I don't know if
8 they were in the desktop or the server.
9 Honestly I have no idea.

10 Q You didn't ask Tom?

11 A No.

12 And then we gave him the list of
13 all the file names and the property
14 addresses, and then he did some searches and
15 then Susan did some searches.

16 Q What do you mean by file names?

17 A The names of all the borrowers in
18 connection with this lawsuit.

19 Q Is that how you saved documents,
20 or is that how you would organize documents?

21 A No, they weren't saved in any
22 particular order, but there were so many
23 e-mails, you know, he needed some kind of --
24 we gave him property addresses, we gave him
25 the borrowers' names, we gave him Barbara

1 P. MALIK

2 Guarino's name again, Amtrust, and
3 everything that came up we produced.

4 Q Did you give him the names of any
5 of the other defendants in this case?

6 A No.

7 Q Did you provide him with these
8 names and this list of properties by e-mail?

9 A I believe so.

10 Q When did you send this e-mail to Tom?

11 A It was around the time that these
12 interrogatories and things were exchanged, I
13 believe. It was around that time when we
14 had document production and things like that.

15 Q With Ekram you didn't provide him
16 with a list of properties or individuals?

17 A No. I don't even believe we were
18 in litigation at that time. We just had the
19 notices of the claims.

20 Q Other than the discovery requests
21 in this action, have you ever been asked for
22 electronic documents prior to the discovery
23 demands in this case?

24 A No.

25 Q In your interrogatories, or your

1 P. MALIK

2 answers to plaintiff's interrogatories,
3 Exhibit 2 -- I am sorry. In your answers to
4 interrogatories, Exhibit Number 3, on page
5 four you identified a number of litigations
6 that you have been involved in as a party.

7 A Yes.

8 Q In the Ashok Goel versus Malik
9 and Associates P.C., the first case listed
10 there, when was that case commenced?

11 A Many, many, many years ago. I
12 don't remember. I don't have an index
13 number there.

14 Q If I said 2004, would that sound
15 familiar to you?

16 A It could be. I don't know. I
17 was thinking --

18 MR. FURMAN: What does this
19 have to do with the purpose of today's
20 deposition?

21 MS. KIM: If you would like to
22 look at the notice, the last section.

23 BY MS. KIM:

24 Q Is that case still ongoing?

25 A Yes.

1 P. MALIK

2 Q Have the parties gone through
3 discovery?

4 MR. FURMAN: Objection. I am
5 going to just advise my client not to
6 answer that question. I want -- you
7 referred me to --

8 MS. KIM: You want me to point
9 you out to the notice where it says
10 information in regard to other
11 litigation?

12 MR. FURMAN: Information about
13 production -- my client is not going
14 to give you answers about other
15 litigation that could prejudice her
16 position in those cases.

17 MR. MUCCIA: I am sorry; are we
18 now agreed that it is asked for in the
19 notice?

20 MR. FURMAN: I am not agreeing
21 to anything.

22 MR. MUCCIA: It is not asked
23 for in the notice?

24 MS. KIM: You didn't object
25 prior to this.

1 P. MALIK

2 MR. FURMAN: It doesn't matter
3 to me what is asked for. I am going
4 to instruct my client not to answer
5 it. Go to the judge and ask for it.

6 You want information on
7 production of documents in other
8 litigation? Sorry, I am not going to
9 allow my client to answer that
10 question, and by all means we will
11 call the judge right now or we will do
12 it by letter, whatever you would like
13 to do. However you want to do it is
14 fine by me.

15 MR. MUCCIA: You got the
16 instruction. Move on. It is an
17 indefensible position.

18 BY MS. KIM:

19 Q Ms. Malik, in your interrogatory
20 responses you list six actions there?

21 A Yes.

22 Q Which of them are still ongoing?

23 A The first two.

24 Q And the last four, what has
25 happened to them?

1 P. MALIK

2 A They have either all been settled
3 or dismissed against my firm.

4 MS. KIM: Counsel, with respect
5 to the first two matters, if I ask her
6 any questions with respect to the
7 discovery or any documents produced or
8 requested in those matters, are you
9 going to give her the same instruction
10 not to answer?

11 MR. FURMAN: Absolutely.
12 Absolutely. Those are pending
13 litigations. My client could
14 conceivably be prejudiced by any
15 questions that she would answer under
16 oath that relate to separate actions.

17 MS. KIM: If I am asking about
18 e-mail or electronic documents
19 produced in that litigation?

20 MR. FURMAN: In those cases?

21 MS. KIM: Yes.

22 MR. FURMAN: Yes, I am going to
23 instruct my client not to answer those
24 questions..

25 MS. KIM: How is she going to

1 P. MALIK

2 be prejudiced?

3 MR. FURMAN: I don't have to
4 answer your question. I am going to
5 instruct my client not to answer.

6 It is obvious how she could be
7 prejudiced. You are asking my client
8 questions about an unrelated case
9 under oath where conceivably whatever
10 answer she could give could be used in
11 discovery in those particular cases.

12 You tell me how she would not
13 be prejudiced by that. I will be
14 happy to hear your answer to that.

15 MS. KIM: What about the cases
16 identified in numbers three through
17 six which have been settled or
18 dismissed against her or the firm?
19 Are you going to give her the same
20 instruction?

21 MR. FURMAN: I am baffled by
22 the relevance of asking.

23 MS. KIM: I am not asking about
24 the relevance. Are you going to give
25 her the same instruction?

1 P. MALIK

2 MR. FURMAN: I am going to
3 instruct my client to answer questions
4 that relate to electronic discovery in
5 relation to this particular case.

6 You are asking about
7 electronic, I assume, production of
8 electronic discovery in other cases.
9 You know, if we are ordered by the
10 court after you want to brief it, I
11 would be happy to do that. If we are
12 ordered by the court to produce Ms.
13 Malik, we are going to produce her
14 obviously for --

15 MR. MUCCIA: Is that an
16 instruction, Mark?

17 MS. KIM: That is what we are
18 asking. Are you going to instruct her
19 not to answer questions about
20 discovery or discovery demands --

21 MR. FURMAN: In unrelated
22 litigation, yes.

23 MS. KIM: No, in the three
24 through six, those cases that have
25 settled and/or been dismissed against

1 P. MALIK

2 her.

3 MR. FURMAN: I don't know to
4 what degree my client could be
5 prejudiced if these claims could be
6 somehow resuscitated. I am going to
7 instruct my client not to answer, yes.
8 I will.

9 There is a whole host of
10 issues. There is attorney/client
11 issues that relate to whatever my
12 client may have discussed with her
13 lawyers. I wasn't her lawyer in those
14 cases. It is palpably improper.

15 So, you know, if you want to go
16 to the court with this, you know, I'll
17 deal with it.

18 BY MS. KIM:

19 Q In 2008, was the company on a
20 centralized computer network environment?

21 MR. FURMAN: What?

22 THE WITNESS: What is that?

23 BY MS. KIM:

24 Q What was, how was there a
25 network?

1 P. MALIK

2 search for documents?

3 A Just went to the file.

4 Q Were you the only person working
5 on that file?

6 A Yes.

7 Q No one was assisting you with
8 that file?

9 A I don't remember who my secretary
10 was at the time, but she would have just
11 been working with me.

12 Q Did you place any sort of
13 litigation hold or send out any sort of
14 notice to hold any documents relating to
15 that matter when you received the request?

16 A To whom would I have sent such a
17 hold, and what is it?

18 Q What are you asking about what is it?

19 A What is a litigation hold?

20 MR. FURMAN: What is a
21 litigation hold? I have no idea what
22 you are talking about.

23 BY MS. KIM:

24 Q You don't know what a litigation
25 hold is?

1 P. MALIK

2 A I don't.

3 MR. FURMAN: I don't think
4 anyone in this room knows that.

5 MR. MUCCIA: I do. It is a
6 pretty well known thing.

7 MR. FURMAN: I promise you I
8 will Google it.

9 THE WITNESS: I have never
10 heard of it.

11 MR. FURMAN: I will probably do
12 it right now as we speak.

13 THE WITNESS: I have been doing
14 litigation for many, many years, maybe
15 not in federal court, but I have never
16 heard what a litigation hold is.

17 BY MS. KIM:

18 Q You have been doing litigation
19 for many years. Have you issued requests
20 seeking electronic documents?

21 A I am sorry?

22 Q Have you issued requests seeking
23 electronic document?

24 A Yes, probably.

25 Q Probably or -- that's a yes or

1 P. MALIK

2 no. It's not a --

3 A I believe so.

4 Q Have your clients ever received a
5 request for electronic documents?

6 A I don't know.

7 MR. FURMAN: Don't answer what
8 your clients do.

9 MS. KIM: You don't know.

10 MR. FURMAN: The answer is
11 nothing because you are asking for
12 something that is privileged and none
13 of your business.

14 BY MS. KIM:

15 Q Have your clients ever asked you
16 for copies of electronic documents?

17 MR. FURMAN: That is also
18 privileged.

19 MS. KIM: It's not privileged
20 when it comes to Amtrust.

21 MR. FURMAN: Then ask about
22 Amtrust.

23 BY MS. KIM:

24 Q Has Amtrust ever asked you for
25 copies of electronic documents?

1 P. MALIK

2 A In connection with these
3 discovery demands and those claim letters,
4 whatever they asked for.

5 And they could have also
6 requested e-mail of closing documents
7 because Amtrust was an e-sign bank. So a
8 lot of their documents were just delivered
9 to them via e-mail and not hard copies. So,
10 yes.

11 Q What would happen with the hard
12 copies?

13 A They would never be generated.
14 There would only be a couple of documents
15 that would be hard copies. Everything else
16 would be electronic.

17 Q And what would you do with the
18 hard copies?

19 A We would just send it to the bank.

20 Q Did you retain any copies?

21 A Whatever we retained we produced,
22 whatever was in my physical files.

23 Q You didn't retain any copies on
24 your server on your desktops?

25 A I don't know.

1 P. MALIK

2 Q You don't know. You didn't ask
3 anyone?

4 A No.

5 Q Is there any policy with respect
6 to e-docs?

7 A No.

8 Q In 2008, no?

9 A No.

10 Q Now?

11 A No.

12 Q How many banks does the firm deal
13 with?

14 A When, and in what period?

15 Q I am sorry, in 2008 how many
16 banks?

17 A Every bank under the sun, except
18 for maybe Emigrant.

19 Q Was Amtrust the only bank doing
20 work by e-docs?

21 A No. All, mostly all the banks
22 were delivering documents to us, but we were
23 required to print them out and have a proper
24 three-set package prepared and send them
25 back hard copies. Amtrust was different in

1 P. MALIK

2 that regard.

3 Q Amtrust was the only bank in
4 2008?

5 A Yes.

6 Q Now?

7 A That was doing e-signing.

8 Q That was doing e-signing. Now,
9 currently, do banks do e-signing?

10 A No, none that I deal with.

11 MR. FURMAN: I just want to
12 respond and to say to Mr. Muccia, I
13 did -- there is such a thing as a
14 litigation hold, and I stand
15 corrected. And evidently you learn
16 something new every day.

17 MR. MUCCIA: I am glad to do
18 that for you.

19 THE WITNESS: Could somebody
20 tell me what a litigation hold is?

21 MR. FURMAN: It is a letter --

22 MR. MUCCIA: Just below the
23 neck.

24 THE WITNESS: That would be the
25 pinched nerve, my pinched nerve.

1 P. MALIK

2 MR. FURMAN: It is a letter
3 that you send in litigation saying
4 hold all documents.

5 (Discussion off the record.)

6 BY MS. KIM:

7 Q Ms. Malik, if you go back to
8 Exhibit Number 1 on your notice, item
9 number 15?

10 A I didn't know they actually
11 published a decision on this. That is
12 interesting.

13 Q You didn't ask Tom about the
14 litigation hold notifications?

15 A There were none.

16 Q But you didn't know what it was,
17 you said?

18 MR. FURMAN: No, no.

19 THE WITNESS: If I didn't know
20 what that was, how would he have known?

21 MR. FURMAN: Are you referring
22 to anything in particular when you say
23 litigation hold? Is there a letter, a
24 document or something that we can
25 refer to, because I don't know what

1 P. MALIK

2 you are talking about.

3 MR. MUCCIA: I thought you just
4 looked it up.

5 MR. FURMAN: It is a concept.
6 I understand the concept.

7 MS. KIM: I can refer you to a
8 couple cases.

9 MR. FURMAN: Cases and concept
10 is fine. Show me a litigation hold
11 letter that my client received.

12 BY MS. KIM:

13 Q You said with respect to the
14 other banks and their closings you printed
15 out everything under the sun and kept them
16 in hard copies in your files. You did not
17 print out anything for Amtrust?

18 MR. FURMAN: Mischaracterizes
19 the testimony.

20 BY MS. KIM:

21 Q For Amtrust in 2008 you printed
22 nothing?

23 A That is not what I said.

24 Q What did you print out, or did
25 you print out anything for Amtrust?

1 P. MALIK

2 A A couple of documents, I don't
3 remember exactly which ones. But I think
4 that at least for our records, even though
5 the e-signed version went to Amtrust
6 electronically, we printed out a whole set
7 for our file. So there was a complete set
8 of documents at least maintained in our
9 physical file.

10 Q So you did print out a whole set?

11 A Yes, but we didn't print out and
12 make three copies, because the bank got a
13 majority of the disclosures by e-mail.

14 We printed out a whole set of the
15 disclosures that were sent to them by e-mail
16 for our file, kept them in the file, and
17 then we did three copies of the note and
18 mortgage and some other documents that were
19 signed hard copies. So the documents that
20 are printed and put in our file, I don't
21 know if they were signed copies or if they
22 were, if they were signed or, you know,
23 just, because there was no signature
24 required on those documents. They just had
25 to come in and click the mouse or e-verify

1 P. MALIK

2 or e-sign, however that procedure worked.

3 Q When you say "they," do you mean,
4 who? Who do you mean? You say they click?

5 A The borrower.

6 Q The borrower clicks. Does the
7 borrower click at year office?

8 A Yes, for those particular Amtrust
9 e-sign closings.

10 Q Are all the loans at issue in
11 this litigation, are they all e-signing?

12 A I do not believe so.

13 Q If they weren't e-signing, what
14 did you do?

15 A Like we would do a traditional
16 bank closing: Print out the package, make
17 three copies, have three hard signatures. I
18 give one copy to the borrower, send one hard
19 copy back to the bank and keep one copy in
20 file.

21 Q How did you communicate with
22 Amtrust? When I say "you" I mean you and
23 your employees who worked with Amtrust on
24 the closings?

25 A Phone and e-mail.

1 P. MALIK

2 Q How did you communicate with the
3 title companies involved in the subject loans?

4 A Phone and e-mail, I would imagine.

5 Q You would imagine or did you
6 check before this deposition?

7 A Did I check what? I did not
8 check anything like that. I just know that
9 that was how we communicated with other
10 people, other companies.

11 Q What about the brokers, how did
12 you communicate with them?

13 A Same, by phone and e-mail.

14 Q What about the seller's attorneys?

15 A Fax, phone, e-mail. Also fax for
16 all of the above.

17 Q Would you retain copies of the
18 faxes?

19 A Yes.

20 Q And I am talking about with
21 regard to these subject loans?

22 A Yes.

23 Q Did you retain copies of the
24 e-mail communications with regards to the
25 subject loans?

1 P. MALIK

2 A Whatever we retained was already
3 provided. Everything in the file, our file
4 was provided.

5 Q How quickly do employees delete
6 e-mails after closings?

7 MR. FURMAN: Objection.

8 THE WITNESS: I don't know.

9 BY MS. KIM:

10 Q Is there any policy in place with
11 regards to deleting e-mails at the company?

12 A At what time?

13 Q In 2008.

14 A No.

15 Q Now?

16 A Not really, just that I want hard
17 copies printed out and put in files.

18 Q So if anyone had a question about
19 a closing, let's say a month afterward,
20 there maybe could be no e-mail to refer back
21 to in 2008?

22 A Correct.

23 Q When did you implement this
24 policy where you asked your employees if
25 there is some communication that they print

1 P. MALIK

2 it out in hard copy and put it in the file?

3 A 2010.

4 Q After the back-up system had been
5 put in place?

6 A Yes.

7 Q After you received the claim from
8 Amtrust, did you instruct your employees or
9 your staff or anyone at the company
10 regarding electronic records?

11 A About what?

12 Q About, did you give them any
13 instructions whether to save them, whether
14 to give them to you?

15 A I don't remember.

16 Q You don't recall, in 2008 you
17 don't recall?

18 A No. I never received any claims
19 in 2008.

20 Q In 2009?

21 A I don't recall.

22 Q Did you ask any employees -- I
23 mean are there any employees who would
24 recall?

25 A I don't know.

1 P. MALIK

2 Q When you received a copy of the
3 complaint in this action, did you give any
4 instructions to your employees regarding
5 Amtrust documents?

6 MR. FURMAN: Objection.

7 Wouldn't that be privileged under the
8 work product?

9 MS. KIM: I am trying to find
10 out about these record retentions.

11 THE WITNESS: Electronic
12 documents?

13 BY MS. KIM:

14 Q Yes.

15 A I don't remember.

16 Q When you received a copy of the
17 discovery demands, did you give any
18 instructions to your employees regarding
19 electronic documents belonging to Amtrust?

20 A Instructions regarding what?

21 Q The electronic documents
22 concerning or relating to Amtrust?

23 A I don't remember.

24 MS. KIM: Can we take a quick
25 five-minute break?

1 P. MALIK

2 Q Was there any sort of policy of
3 using personal accounts or other e-mails
4 other than Malik PC.com?

5 A No, and I don't believe anybody
6 did, but I don't know for sure.

7 Q Did you ask any of your employees
8 what e-mail accounts they used with respect
9 to the Amtrust accounts?

10 A No.

11 Q Prior to this deposition, did you
12 ask any of your employees what e-mail
13 accounts they used?

14 A No.

15 Q You testified earlier that Tom
16 had told you that Utah is where the files
17 are archived?

18 A Yes.

19 Q Do you know if the archive is a
20 remote and secure location?

21 A I don't know.

22 Q Did you ask Tom?

23 A No.

24 Q What is archived in Utah?

25 A I don't know.

1 P. MALIK

2 reindexed, purged, repaired or archived?

3 That wasn't the question.

4 Q They were trying to find an
5 e-mail that they had deleted?

6 A But that is not reindexed,
7 purged, repaired or archived.

8 Q What I am asking, do you recall
9 any incident in which --

10 A I don't recall any specific
11 incident, no. But I am sure it must, it may
12 have happened. I don't know that it didn't.

13 Q What about draft documents? Do
14 you do your documents in Microsoft Word or
15 in Word Perfect?

16 A Sometimes both.

17 Q Do your employees work in
18 Microsoft Word or Word Perfect?

19 A Both.

20 Q Have there been any incidents
21 where the system has crashed and you are
22 trying to retrieve the document, a copy of
23 the document?

24 A Yes; not that the system is
25 crashed, but they were looking --

1 P. MALIK

2 Q But the program has crashed?

3 A Not that the program has crashed,
4 but that they were looking for a document.

5 Q Was that in 2011?

6 A I am just telling you generally,
7 yes, there have been incidents. I don't
8 know when.

9 Q When did these incidents begin?

10 A It is not a beginning. I mean
11 throughout the time that I have been using a
12 computer, I can't tell you. There have been
13 incidents where people have said, employees
14 have told me that they've lost a document
15 and they have tried to retrieve it.

16 Q And what happens then?

17 A Sometimes it is retrievable and
18 sometimes they could get it and sometimes
19 they couldn't.

20 Q How would they find out if they
21 couldn't get it or not?

22 A In every incident it would be
23 either they would look through the desktop,
24 they would look through the server, which we
25 had the servers at the time, or they would

1 P. MALIK

2 A What do you mean replacement
3 policy?

4 Q Do you replace computers?

5 A Yes.

6 Q How frequently?

7 A When we need to, when the
8 computer doesn't work any more.

9 Q In 2010, have you replaced any
10 computers?

11 A I believe so.

12 Q How many?

13 A Maybe one or two.

14 Q 2009?

15 A I don't remember.

16 Q Who would know?

17 A Ekram maybe.

18 Q Would your bookkeeper know?

19 A No.

20 Q To buy a computer, who would they
21 ask? Did they ask you to buy a new computer
22 or who would inform you that a new computer
23 would need to be purchased?

24 A If a computer broke down, then
25 they would ask me and then I would authorize

1 P. MALIK

2 either Ekram to bring in a new computer or
3 we would order it from our account at Dell.

4 Q What happened with the old
5 computers?

6 A We dismantle them and then, you
7 know, I guess just discard them. They are
8 broken and discarded.

9 Q Who is "we"?

10 A It would be Tom or whoever the IT
11 person was.

12 Q And prior to 2010?

13 A It would have been Ekram.

14 Q Would Ekram come to the office
15 and pick up the computer and take it with him?

16 A Yes.

17 Q And Tom does the same?

18 A Yes.

19 Q How many computers were replaced
20 in 2009?

21 A I don't remember.

22 Q 2008?

23 A I don't remember.

24 Q Would Ekram have that information?

25 A Probably, if we bought them from

1 P. MALIK

2 him.

3 Q Dell would have had the
4 information too, if you bought them from
5 Dell?

6 A I don't think we had an account
7 with Dell in '08. I believe we had the
8 account with Dell in '09 at some point, but
9 there could have been other people that we
10 had bought the computer from.

11 Q For tax purposes, would you
12 maintain the invoices for these purchases?

13 MR. FURMAN: Objection.

14 THE WITNESS: I am sure they
15 would be somewhere. I don't know.

16 (Brief break.)

17 BY MS. KIM:

18 Q Before the break, we were
19 discussing when you would discard old
20 computers prior to 2010, Ekram would pick up
21 the computers.

22 A I believe so, but I think we
23 still had some old computers lying around
24 that I think we just threw away.

25 Q In 2008, do you recall how many

1 P. MALIK

2 computers Ekram took or how many computers
3 were thrown away?

4 A No.

5 Q 2009?

6 A No.

7 Q 2010?

8 A No.

9 Q If Ekram would come by and pick
10 up the old computer, what would happen with
11 the hard drive?

12 A I don't know.

13 Q Would you do anything with the
14 hard drive?

15 A I don't know.

16 Q Would you ask Ekram to do
17 anything with the hard drive?

18 A No.

19 Q Was there any sort of policy with
20 respect to the old hard drive --

21 A No.

22 Q -- that was going to be taken by
23 Ekram?

24 A No.

25 Q Why would you decide with other

1 P. MALIK

2 computers just to throw them away rather
3 than have Ekram pick them up?

4 A Because it could have been that
5 we had asked him repeatedly and he never
6 came by, and we just picked them up and
7 threw them out because I was tired of seeing
8 them lying around.

9 Q But the computers that you
10 discarded, would you do anything with their
11 hard drives?

12 A No.

13 Q Would you do anything with the
14 computers prior to discarding them?

15 A No.

16 Q Would you have anyone go through
17 the computers trying to retrieve any files
18 from those computers?

19 A No.

20 Q What about in 2010?

21 A We didn't throw any out.

22 Q You didn't throw out any computers?

23 A No.

24 Q Did Tom take away any computers?

25 A I don't know.

1 P. MALIK

2 Q How come you don't know?

3 A I don't know if he did in 2010.

4 Q Did you ask Tom to remove any
5 computers?

6 A The only thing -- did I ask him
7 to remove any computers?

8 Q Yes.

9 A I don't remember if we replaced
10 anything, if something had, if -- I don't
11 remember.

12 Q What about so far in 2011?

13 A I don't remember. I don't
14 believe so.

15 Q Did you throw away any computers?

16 A No, I don't think so.

17 Q And you didn't throw away any
18 computers in 2010?

19 A I said I don't remember.

20 Q What about your home computers
21 prior to 2010?

22 A What about them?

23 Q Did you replace any of them?

24 A Yes.

25 Q What did you do with the old

1 P. MALIK

2 computers?

3 A Throw them out.

4 Q Did you have anyone look at
5 computers prior to throwing them out?

6 A No.

7 Q How did you throw them out?

8 A In the trash.

9 Q What did you do with the hard
10 drives?

11 A Nothing.

12 Q This is prior to 2010?

13 A Yes.

14 Q How many --

15 A Was it 2010? We got a new
16 computer I think 2010.

17 Q Did you throw away any computers
18 in 2008?

19 A I don't remember.

20 Q You don't recall if you threw
21 away any home computers prior to 2010?

22 A No.

23 Q How many computers did you throw
24 away in 2010?

25 A Probably one.

1 P. MALIK

2 Q Why do you say probably? Were
3 there two that could have been thrown out?

4 A No, I think it was just one.

5 Q What about 2011?

6 A None at home, no.

7 Q The computer that you threw out
8 in 2010, what was it? Was it a desktop or a
9 laptop?

10 A Desktop.

11 Q What about computer hardware?
12 With old computer hardware, computers that
13 you were going to throw out, prior to 2010
14 did you have any sort of policy regarding
15 their disposal or recycling?

16 A No.

17 Q And after 2010?

18 A No.

19 Q Did you sell the hardware?

20 A No. Can you sell hardware? I
21 didn't even know.

22 Q Parts.

23 A Interesting.

24 Q What about used disks or drives,
25 what do you do with them prior to 2010?

1 P. MALIK

2 Q You don't know if anyone looked
3 at it?

4 A No.

5 Q When you found out that e-mails
6 were not retrievable from the server, did
7 you ask anyone to look at your computer to
8 see if there were any e-mails on the
9 computer at the office?

10 A No.

11 Q Did you ask anyone to look at
12 your computer at home?

13 A No.

14 Q At that time -- I am sorry, in
15 2009, did you have one or two home computers?

16 A In 2009 we had one laptop and one
17 home desktop.

18 Q Two computers?

19 A No, because I wouldn't ask them
20 to check my computer.

21 Q Why not?

22 A My e-mail is not, my Outlook
23 e-mail is not accessible on my computer.

24 Q Then how did it work where you
25 would work off your e-mail?

1 P. MALIK

2 A I never worked off Malik P.C.
3 e-mail.

4 Q Did you work off your Yahoo
5 e-mail?

6 A Yes.

7 Q So then what happened with the
8 documents off the Yahoo account?

9 A It wouldn't be on a desktop, it
10 would be in the e-mail, in the Yahoo e-mail.

11 Q But you didn't save any e-mails
12 or documents from the Yahoo account onto
13 your desktop?

14 A No.

15 Q Or onto your laptop?

16 A I may have, but not in connection
17 with this lawsuit.

18 Q So you had no one to examine it
19 to confirm whether there were any?

20 A No, because I checked the Yahoo
21 e-mail itself for any e-mails, and there
22 were none.

23 Q Just to clarify, you mean there
24 were no e-mails regarding Amtrust?

25 A Yes.

1 P. MALIK

2 Q You said you used your Yahoo
3 account for work purposes?

4 A Yes.

5 Q So you used it for other clients
6 but not Amtrust?

7 A I did not say that.

8 MR. FURMAN: Objection.

9 BY MS. KIM:

10 Q You used it for Amtrust?

11 A I may have, yes.

12 Q In 2010, did anyone examine your
13 desktop for materials in connection with
14 this lawsuit?

15 A I don't know.

16 Q Did you ask anyone?

17 A To examine my desktop?

18 Q Correct. At the office?

19 A No, specifically, no.

20 Q What about in response to the
21 discovery requests, did you ask anyone?

22 A I told them to check to see if
23 they could find anything. If they checked
24 my desktop they may have. I don't know.

25 Q Who is "they"?

1 P. MALIK

2 A Anybody, like Susan or Danielle,
3 like I said, the two people that I asked
4 them to search the individual e-mail
5 accounts.

6 Q What about your desktop, did they
7 search that?

8 A I don't know.

9 Q You didn't ask them to?

10 A Specifically, no. I asked them
11 to search. As part of that search they
12 could have searched it, I don't know. If
13 you want to provide a separate demand, I
14 will get that answer to that question, but I
15 don't know right now.

16 Q What about, in 2010 how many
17 computers did you have at home?

18 A Two laptops and one desktop.

19 Q Of the three computers, did
20 anyone examine those computers?

21 A No.

22 Q Or files in connection with this
23 lawsuit?

24 A No.

25 Q What about in 2011?

1 P. MALIK

2 A No. There wouldn't be any point.
3 Those computers weren't in existence around
4 the time that you are asking about. That
5 was 2008. And also I think my office
6 desktop I got after 2008.

7 Q Did you use your computers at
8 home to access your Yahoo account?

9 A Yes.

10 MS. KIM: We are going to
11 adjourn this deposition. We are going
12 to seek rulings with respect to your
13 instructions not to answer and with
14 respect to whether this witness is an
15 adequate 30(b)(6) witness. We will
16 reconvene subject to those rulings.

17 MR. FURMAN: Okay. I am not
18 adopting your editorializing of what
19 we are concluding. As far as I am
20 concerned, we are concluding.

21 MS. KIM: We are not
22 concluding.

23 MR. MUCCIA: There is a
24 difference of opinion. I understand
25 your opinion and you understand ours.